

21001

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
RON ZYLSTRA d.b.a. ZYLSTRA
CONSTRUCTION,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 782

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$200 civil penalty for an alleged open-burning violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 23rd day of May, 1975, at Seattle, Washington; and appellant, Ron Zylstra d.b.a. Zylstra Construction, appearing pro se and respondent, Puget Sound Air Pollution Control Agency, appearing through Keith D. McGoffin; and Board members present at the hearing being Chris Smith (presiding) and Walt Woodward and the Board having considered the sworn testimony, exhibits, records and files herein and having

1 entered on the 13th day of June, 1975, its proposed Findings of
2 Fact, Conclusions of Law and Order, and the Board having served
3 said proposed Findings, Conclusions and Order upon all parties
4 herein by certified mail, return receipt requested and twenty days
5 having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 13th day
11 of June, 1975, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 17th day of July, 1975

15 POLLUTION CONTROL HEARINGS BOARD

16 

17 CHRIS SMITH, Chairman

18 

19 WALT WOODWARD, Member

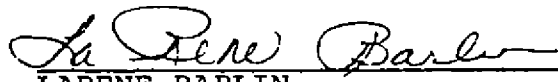
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26 FINAL FINDINGS OF FACT,
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CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 18th day of July, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Keith D. McGoffin
Burkey, Marsico, Rovai, McGoffin,
Turner and Mason
P. O. Box 5217
Tacoma, Washington 98405

Mr. Ron Zylstra
Zylstra Construction
926 N.E. 176th Place
Seattle, Washington 98155



LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
RON ZYLSTRA d.b.a. ZYLSTRA)
CONSTRUCTION,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 782

FINDINGS OF FACT,
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This matter, the appeal of a \$200 civil penalty for an alleged open-burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on May 23, 1975.

Appellant appeared pro se. Respondent appeared through Keith D. McGoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were admitted.

2 From testimony heard and exhibits examined, the Pollution Control
3 Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd
7 Ex. Sess., has filed with this Board a certified copy of its Regulation
8 I containing respondent's regulations and amendments thereto.

9 II.

10 Section 9.02(b)(1) of Regulation I makes it unlawful to cause or
11 allow an outdoor fire in an area where respondent's Board of Directors
12 has prohibited outdoor burning. Section 9.02(b)(4) bans outdoor
13 fires for demolition purposes. Section 9.02(d) bans outdoor fires
14 for which prior written approval has not been issued by respondent.
15 Section 9.02(g) declares it shall be prima facie evidence that the
16 person who owns or controls property on which an outdoor fire occurs
17 has caused or allowed the fire. Section 3.29 authorizes a civil
18 penalty of not more than \$250 for each violation of Regulation I.

19 III.

20 Appellant is a general contractor who, prior to, on and after
21 December 19, 1974, was and is engaged in the construction of an
22 academy for the Seattle Police Department on property owned by the
23 Seattle Police Athletic Association at 11030 E. Marginal Way South,
24 Seattle, King County. The area is a large one on a hill in the
25 Duwamish River watershed. The property is within an area in which
respondent's Board of Directors has prohibited outdoor burning. The

27 FINDINGS OF FACT,
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property has minimal fencing but, because of the hilly topography, is accessible only through two access roads, one of which is guarded by the Police Department. The property, close to railroad tracks, is subject to use by transients who, in the past, slept in two abandoned structures and who, on occasion, lit fires for cooking and warmth. Part of appellant's contract called for the demolition of the two abandoned structures and, by the completion of the contract in September, 1976, for the disposition of the demolished material.

IV.

At an unknown time, probably in November, 1974, appellant inquired of King County Fire District No. 1 if it would be interested in conducting training fires at the two abandoned structures and, for appellant's purpose, thus demolishing them. A fire district official, after conferring with an inspector employed by respondent, declined to conduct the training fire.

Appellant, who made no written application for an outdoor fire permit, regarded the contact with the fire district as an exploratory effort to find the cheapest method of demolition and disposal. Respondent regarded the incident as its denial of an outdoor burning permit.

V.

Appellant generally was aware of respondent's outdoor burning regulations and, by virtue of his contract with the city, of his responsibility to observe those regulations.

VI.

Prior to December 19, 1974, appellant demolished the two abandoned

1 structures and stacked the waste material in a pile 50 feet long,
2 15 feet wide and five feet high. The pile was placed away from the
3 academy construction site. There, therefore, was no necessity for
4 appellant to dispose of the waste material until completion of his
5 contract with the city.

6 VII.

7 December 19, 1974 was a wet, windy and rainy day. Appellant's
8 employees were sent home at 2:00 p.m. because of the inclement weather.
9 Appellant was not present at the site that day.

10 At 5:17 p.m., King County Fire District No. 1 was called to the
11 site to extinguish a fire in the demolition pile. It took more than
12 three hours and 2,000 gallons of water to douse the blaze.

13 The fire district chief, an experienced fire fighter, believed
14 the fire had been burning for about two hours prior to the alarm and
15 was not of accidental cause. He notified respondent of the fire.

16 VIII.

17 On December 20, 1974, an inspector employed by respondent visited
18 the site and talked to appellant's superintendent who said he did not
19 know how the fire was started but, when informed there would be a
20 \$200 civil penalty because of the fire, added, "We didn't get that
21 much burned."

22 Respondent cited appellant for a violation of Section 9.02 of
23 Regulation I in Notice of Violation No. 10355 and, in connection
24 therewith, issued a \$200 civil penalty in Notice of Civil Penalty No. 1876,
25 which is the subject of this appeal.

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IX.

No testimony was presented indicating appellant has a prior record of Regulation I violations

X

Appellant, not a lawyer and unfamiliar with the type of hearing conducted by this Board, did not cause his superintendent or other employees to appear as witnesses.

XI.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such

From these findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

There is no evidence directly linking appellant or his employees to the start of the fire. There also is the fact that, assuming appellant did have a part in the fire, he certainly selected a mighty wet day for an effective fire.

However, pursuant to Section 9 02(g) of respondent's Regulation I, appellant, the holder of a construction contract at the site, was in "control" of the property. We hold that a contractor with such control "causes or allows" a fire when he had created the genesis of an unlawful fire, when he had notice that transients lit fires on the property, and when, knowing this, he had failed to take reasonable and timely precautions to prevent the continuing and unauthorized entry thereon of persons who are likely to ignite fires, or by removing the

FINDINGS OF FACT,
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1 materials which would cause a fire. Accordingly, we find appellant to
2 be in violation of Section 9.02 as cited in Notice of Violation No 10355,
3 except that we do not agree that a "permit had been denied." We find
4 that appellant did not apply for an outdoor fire permit.

5 II.

6 We do not concur in the reasonableness of the amount in Notice of
7 Civil Penalty No. 1876. The \$200 amount is four-fifths of the maximum
8 allowable sum and yet there is no testimony of any prior record of
9 violation by appellant. Meanwhile, the Board has its doubts as to
10 appellant's complicity, if any, in a deliberate setting of the fire.
11 Appellant had no urgency to burn the debris, it was not interfering
12 with his construction and he was not compelled, by contract, to remove
13 the material quickly.

14 III.

15 Meanwhile, the Board is left with no direct testimony from
16 appellant's employees who, apparently, were the last persons to be
17 near the debris pile before the fire district was called some three
18 hours later. The Board has considered reopening the hearing for their
19 testimony but, assuming they would testify that they had no part in
20 starting the fire, the Board still would be left with Section 9.02(g)
21 and its requirement that appellant controlled the site and "allowed"
22 the fire. Rather than reopening the hearing, the Board believes justice
23 will be met more simply by a suspension of the penalty.

24 IV.

25 Any Finding of Fact which should be deemed a Conclusion of Law is
hereby adopted as such.

27 FINDINGS OF FACT,
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1 Therefore, the Pollution Control Hearings Board issues this

2 ORDER

3 The appeal is denied, Notice of Violation No. 10355 is sustained,
4 but payment of the \$200 in Notice of Civil Penalty No. 1876 is suspended
5 pending no other violation of Regulation I by appellant during the
6 completion of his contract with the city.

7 DONE at Lacey, Washington, this 13th day of June, 1975.

8 POLLUTION CONTROL HEARINGS BOARD

9
10 Chris Smith
11 CHRIS SMITH, Chairman

12 Walt Woodward
13 WALT WOODWARD, Member
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26 FINDINGS OF FACT,
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